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MEMORANDUM FOR:

Office of Legislative Liaison

THROUGH:

C/L&LD/OGC

FROM:

Office of General Counsel

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SUBJECT:

H.R. 3939 -- Regulatory Oversight and Control
Act of 1983

1. I am writing in response to your memorandum of 18 October 1983 requesting comments on the captioned legislation.

2. On the basis of my review and for the reasons set forth in your memorandum, I concur in your judgment that the Agency should indicate to the Office of Management and Budget that it has no objection to this Bill.

3. The Agency's primary interest in such Bills is to insure that the "military and foreign affairs" exception to the requirement for publication of Agency rule-making, as contained in the current Administrative Procedures Act, is retained in any amendments. This exception, as you note, is retained in H.R. 3939.

4. The "Bumpers amendment," as noted in the OMB information sheet and found on pg 31 of the Bill is unfortunate because it would remove the presumption of regularity from an Agency regulation if and when one was ever judicially challenged. The chances that an Agency regulation will be judicially challenged, and the likelihood of success of any Agency attempt to compel deletion of the "Bumpers amendment" from this Bill are both so small, however, that opposing the Bill on those grounds is not justified. That sort of argument is one which would have to be made by the major regulatory agencies.

5. We appreciate the opportunity to comment on this legislation.

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cc: Deputy Director for Administration
Associate Deputy Director for Administration